IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.368 OF 2004

IN

WRIT PETITION NO.7101 OF 2003

D.Janardan ...Petitioner

Versus

Mr.B.D.Banerjee ...Respondent

.....

Mr.Ketan A.Chothani for Petitioner.

Ms.S.M.Paranjape i/b Mr.S.M.Kamble for Respondent.

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CORAM: A.M.KHANWILKAR, J.

JULY 6, 2006.

P.C.

1. Heard Counsel for the parties. Perused the Judgment of the Division Bench dated December 5, 2003 passed in Writ Petition No.7101 of 2003.

2. The grievance of the Petitioner that rejection of the complaint by Respondent No.1 on the reasoning that Petitioner has already resorted to some other remedy before the consumer forum

tantamount to wilful disobedience of the direction of this Court. It is not possible to accept this submission. Para 7 of the order as passed by the Division Bench merely requires the Respondent No.1 to decide the complaint lodged by the Petitioner.

3. To get over this position, Counsel for the Petitioner would contend that two issues were raised before the Division Bench. The first plea taken on behalf of the Respondent was regarding pecuniary jurisdiction and the second aspect canvassed in the Writ Petition was that the Petitioner cannot avail of two different remedies at the same time. It is submitted that the Division Bench rejected both these contentions canvassed on behalf of the Respondent. For this purpose, reliance is placed on the observations made in Para 5 of the Judgement in question which mentions that the Court was of the view that neither of the grounds pressed into service by the first Respondent were right. Indeed, the Division Bench has made that observation in Paragraph 5, but in the entire judgment, there is no reference to the stand of the Respondent No.1 that the complaint

cannot be entertained on account of the fact that the Petitioner has taken recourse to some other remedy. If that contention was specifically adverted to and rejected, perhaps, it was open for the Petitioner to contend that it was a case of wilful disobedience. However, in absence thereof, it is not possible to accede to the argument of the Petitioner so as to invoke contempt action. Hence, dismissed. Notice issued to Respondent stands discharged.

A.M.KHANWILKAR, J.